HON'BLE SRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL NO.1030 OF 2006

Between:

Suryapet Rice Millers Association,
Jammigadda, Suryapet, Nalgonda District,
Represented by its President, Morisetty Satyanaraya,
& two others.

… Appellants.

AND

The Commissioner & Director of Marketing,
Government of A.P., Hyderabad
& two others.

… Respondents.

Counsel for the Appellant : Sri S.Ramchander Rao
Senior Counsel assisted by
Sri S. Srinivas

Counsel for respondent No.1 : Government Pleader for
Agriculture

Counsel respondent No.2 : Sri V.V.N.Narayana Rao

Counsel for respondent No.3 : Sri P.Prabhakar Rao

Dated: 18.10.2006

:: JUDGMENT ::

Per Sri C.V.Nagarjuna Reddy,J

This writ appeal is filed against the order of a learned Single Judge whereby he dismissed W.P.No.16730 of 2004 filed by the appellant. The learned Single Judge disposed of the said writ petition along with another writ petition namely, W.P.No.7621 of 2005, as issues involved in both the writ petitions were common.

The appellants are three different associations representing Rice Millers, Pulses and Dal Millers and Oil Millers and Oil Traders carrying on business in Suryapet town, Nalgonda district. They have assailed the validity of bye-law No.35 published in Andhra Pradesh Gazette No.14 (Rules Supplement), dated 28.6.2001 and the consequential resolution dated 1.5.2004 passed by the Agricultural Market Committee, Suryapet, the second respondent, as approved by the first respondent and published in A.P. Gazette No.26 (Rules Supplement to Part II), dated 24.6.2004, as illegal, arbitrary, void and contrary to Section 34 of A.P. Agricultural Produce and Livestock Market Act 1966, for short 'the Act'.

Shorn of unnecessary details, the petitioners' case, as pleaded in the affidavit filed in support of the writ petition is that the second respondent - Market Committee, which is constituted under Section 4 of the Act, is empowered to regulate its own business. That Section 34 of the Act provides for making bye-laws for each market committee and Section 34(1) of the Act deals with bye-law (1) of the Act, according to

which Market Committees shall have to frame bye-laws and send the same to Director of Marketing for approval and that once the approval is made, the same shall be published in Andhra Pradesh Gazette in English and Telugu languages and it shall come into effect on the date of its communication. That the second respondent in exercise of the said power framed its byelaws and submitted the same to the first respondent who approved the bye-laws which were published in Andhra Pradesh Gazette dated 26.8.1971 and that ever since the said bye-laws were in vogue and being followed by the second respondent. Annexure IV of the said byelaws prescribed Hamali charges to be borne by the seller @ Rs.0.13 ps., per bag and all other charges such as Commission, weighment charges and other incidental charges to be borne by the seller. By the time of filing of the writ petition, the Hamali charges were enhanced to 65 ps., per bag to be paid by the seller, who were in fact paying the said charges. The petitioners' claim that they are the purchasers of the agricultural produce including groundnut for which market charges, mainly hamali charges, are being paid by the sellers as per the bye-laws of the market committee.

The petitioners further pleaded that the first respondent amended bye-law No.35 by adding sub-byelaws No.2 and 3 while assigning the original bye-law No.35 with the number of bye-law No.35.1. The sub-byelaw No.3, as added by way of amendment, is to the following effect:

> "…Commission charges that portion of the Hamali charges for the express function of unloading the produce from bullock cart, tractor, truck or lorry and cleaning charges, if done, before sale, prescribed in Annexure IV under the bye law alone are payable by the sellers of such notified products. All other market charges prescribed in the said Annexure IV are payable by the purchasers."

This byelaw was sought to be given effect to by the second respondent by passing a resolution on 1.5.2004 whereunder it was proposed to enhance Hamali charges from Rs.0.65 ps., to Rs.1/- to be borne by the purchasers. The second respondent thereupon sent the resolution to the first respondent, who approved the same and published in A.P. Gazette No.26 dated 24.6.2004. It is this notification, which is challenged in the writ petition, mainly on two grounds, namely; 1) that under Section 34 of the Act, it is the market committee concerned which has to first contemplate amendment of bye-laws and after passing resolution to amend bye- law, it has to seek the approval of the first respondent. The second respondent, in stead of applying its mind independently, acted on the dictates of the first respondent, who without any jurisdiction amended the byelaw which was thrust on the second respondent, and 2) that, in any event, the amendment making the purchasers liable to pay Hamali charges from the stage of the sale is illegal and arbitrary.

The respondents have not filed any counter affidavits. The learned single Judge rejected the contention advanced on behalf of the appellants that the resolution passed by the second respondent based on the amendment dated 28.6.2001 made to bye-law No. 35 by the first respondent is contrary to the provisions of Section 34 of the Act, on the ground that since subsequent to the said amendment made by the first respondent, the second respondent has independently exercised its power and passed the resolution on 7.2.2004, which was approved and published in Gazette No.26 dated 24.6.2006 and that therefore, the requirements of Section 34(1) of the Act were satisfied.

We have heard the learned Senior Counsel Sri S.Ramchander Rao, appearing for the petitioners, Government Pleader for Agriculture

for Respondent No.1, Sri V.V.Narayana Rao for Respondent No.2 and Sri P.Prabhakar Rao for Respondent No.3.

In order to appreciate the contention pertaining to the validity of the impugned amendments it is apposite to extract Section 34 of the Act.

> *" **34. Bye-laws:**- (1) Subject to any rules made by the Government under Section 33 and with the previous sanction of the Director of Marketing, a market committee may, in respect of the notified area for which it was constituted, make bye-laws for the regulation of the business and the conditions of trading therein;-*
>
> *Provided that it shall be competent for a market committee to adopt the bye-laws of any other market committee by a resolution and the bye-laws so adopted shall come into force in respect of the market committee adopting the same on the publication of the resolution in the Andhra Pradesh Gazette and it shall not be necessary to publish the adopted bye-laws in the said Gazette.*
>
> *Provided further that where a market committee fails to make bye-laws or adopt the bye-laws of some other market committee under this sub-section within two months from the date of its constitution, the Director of Marketing may make such bye-laws as he thinks fit, and the bye-laws so made shall remain in operation until the market committee has made bye-laws under this sub-section.*
>
> *(2) Every bye-law made under this section shall be published in English and Telugu in the Andhra Pradesh Gazatte and it shall come into operation on the date of its publication in English in the Andhra Pradesh Gazette.*
>
> *(3) Any bye-law made under this section may provide that any contravention thereof shall be punishable with fine which may extend to five hundred rupees."*

From a reading of the afore extracted provision, it is evident that power to make a bye-law is vested in the market committees and the role of the Director of the Marketing is limited only to accord previous sanction

for making bye-laws. It is only in a case where a market committee failed to make bye-laws or adopted the bye-laws of some other market committee that the Director of Marketing can make bye-laws for such a market committee and even those bye-laws will remain in operation only until the market committee has made the bye-laws.

While this is the scheme underlying Section 34 of the Act, the first respondent has embarked upon amending byelaw No.35 and also making the purchasers liable to pay the Hamali charges after the sale. As a sequel to the said amendment, the second respondent passed a resolution on 7.2.2004 whereunder it was decided to follow the amendment made to bye-law No.35, by the first respondent. It is clear from a reading of the said resolution that the only reason which weighed with the second respondent for passing such a resolution was the said amendment made by the first respondent. The second respondent thus in stead of independently applying its mind and exercising its power under Section 35 of the Act, solely relied upon the amendment made to bye-law No.35 by the first respondent. Since, admittedly the second respondent has framed the bye-laws which were published in Andhra Pradesh Gazette dated 26.8.2001, the first respondent is denuded of the power to make any bye-law for the second respondent committee. The respondents have adopted a procedure which is in direct conflict with the procedure laid down under Section 34 of the Act. As already mentioned hereinabove, the second respondent, if it thinks that the amendment to bye-law 35 is necessary, it has to first take the initiative and amend the bye-law with the previous sanction of the first respondent. But, in stead of following this procedure, the respondents have followed a converse procedure where the first respondent has amended the bye law, which was acted upon by the second respondent by passing a resolution to give effect

to the said bye-law. This procedure, which is blatantly contrary to the provisions of Section 34 of the Act, cannot therefore be sustained and the impugned notifications and the resolution dated 01.05.200 of the 2nd respondent are liable to be declared as illegal and unenforceable. The reasoning of the learned single Judge that with the passing of the resolution dated 7.2.2004 by the second respondent, the amendment dated 28.6.2001, made by the first respondent and published in the Andhra Pradesh Gazette, shall be treated as redundant, cannot be sustained, for, as noted above the only basis for passing resolution dated 7.2.2004 was the amendment of bye-law dated 28.6.2001 made by the first respondent. From the contents of the resolution dated 7.2.2004, it is reasonable to presume that the second respondent would not have contemplated and conceived of such a resolution, but for the amendment dated 28.6.2001. Therefore, the impugned notifications and the resolution dated 01.05.2004 of the 2nd respondent are liable to be struck down as ultra vires the procedure prescribed under Section 34 of the Act.

The writ appeal is accordingly allowed to the extent indicated above. We may, however, make it clear that this order does not preclude the second respondent to exercise its power independently afresh after following the due procedure prescribed under the provisions of the Act.

C.V.NAGARJUNA REDDY,J

Date: 18.10.2006

G.S.SINGHVI, CJ

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